

Consistency of SEC assessment under the Cartagena Protocol with other international obligations

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Article 26.1 of the Cartagena Protocol on Biosafety

(J Falck-Zepeda)

- Applies to decision on import only, or
- National measures



1 . The Parties, **in reaching a decision on import** under this Protocol or under its domestic measures implementing the Protocol,

- Voluntary – **NOT** mandatory



may take into account,

- Especially –not limited to – WTO = **focus of this paper**



consistent with their international obligations,

- Strictly a specific focus and line of causality



socio-economic considerations arising from the impact of living modified organisms on the **conservation and sustainable use** of biological diversity,

- Explicit impact indicator and emphasis on one target group



especially with regard to the **value of biological diversity** to indigenous and local communities.

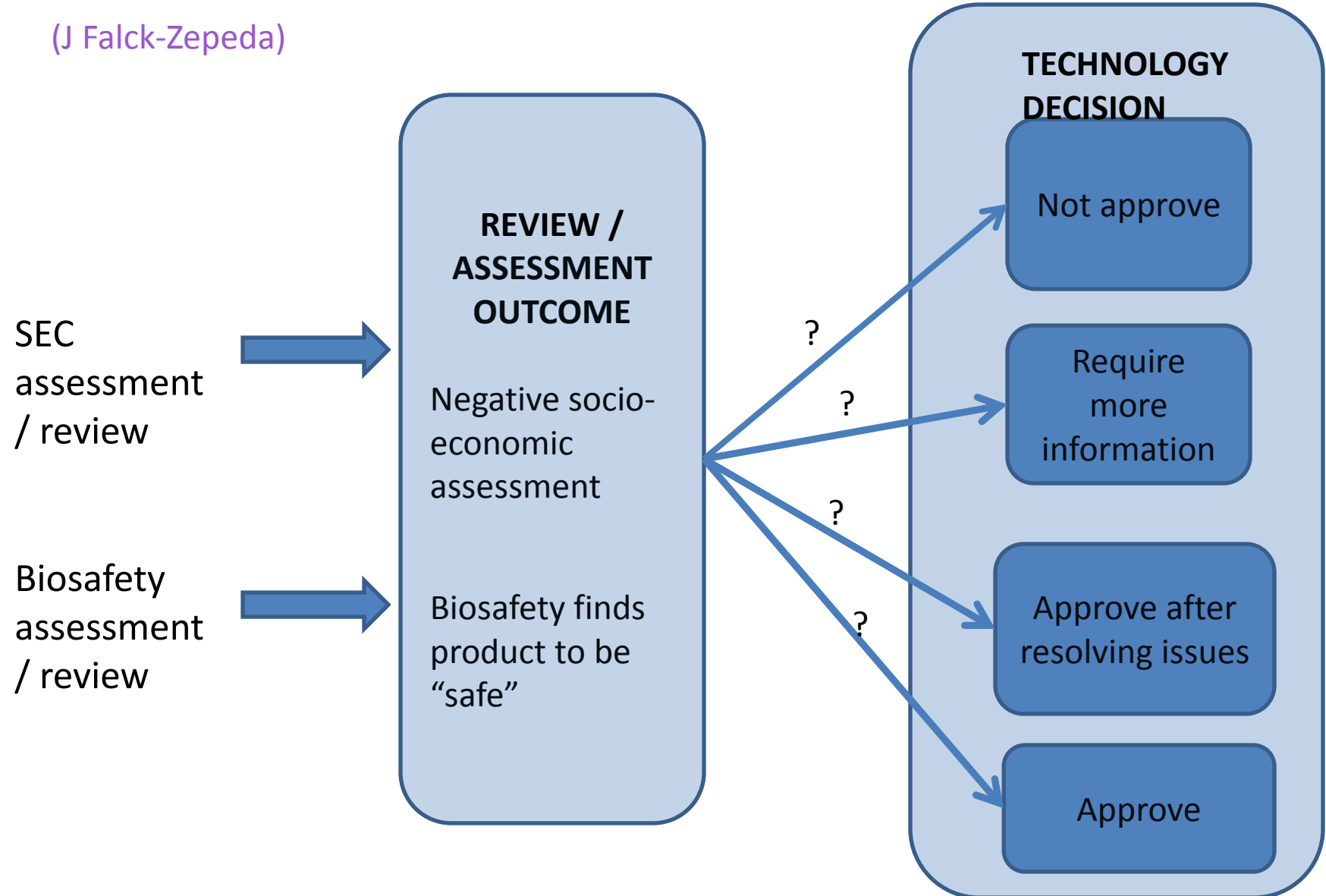
Article 26 is not ...

- an impossible regulatory barrier to overcome
- of mandatory implementation
- a "fuzzy" approach to slowing or preventing the flow of technology
- a platform to solve socio-economic problems in a country

Who is best placed to decide whether a technology is beneficial or not? Producer, consumer or regulators ...

What can a decision maker do with the results a socio-economic assessment?

(J Falck-Zepeda)



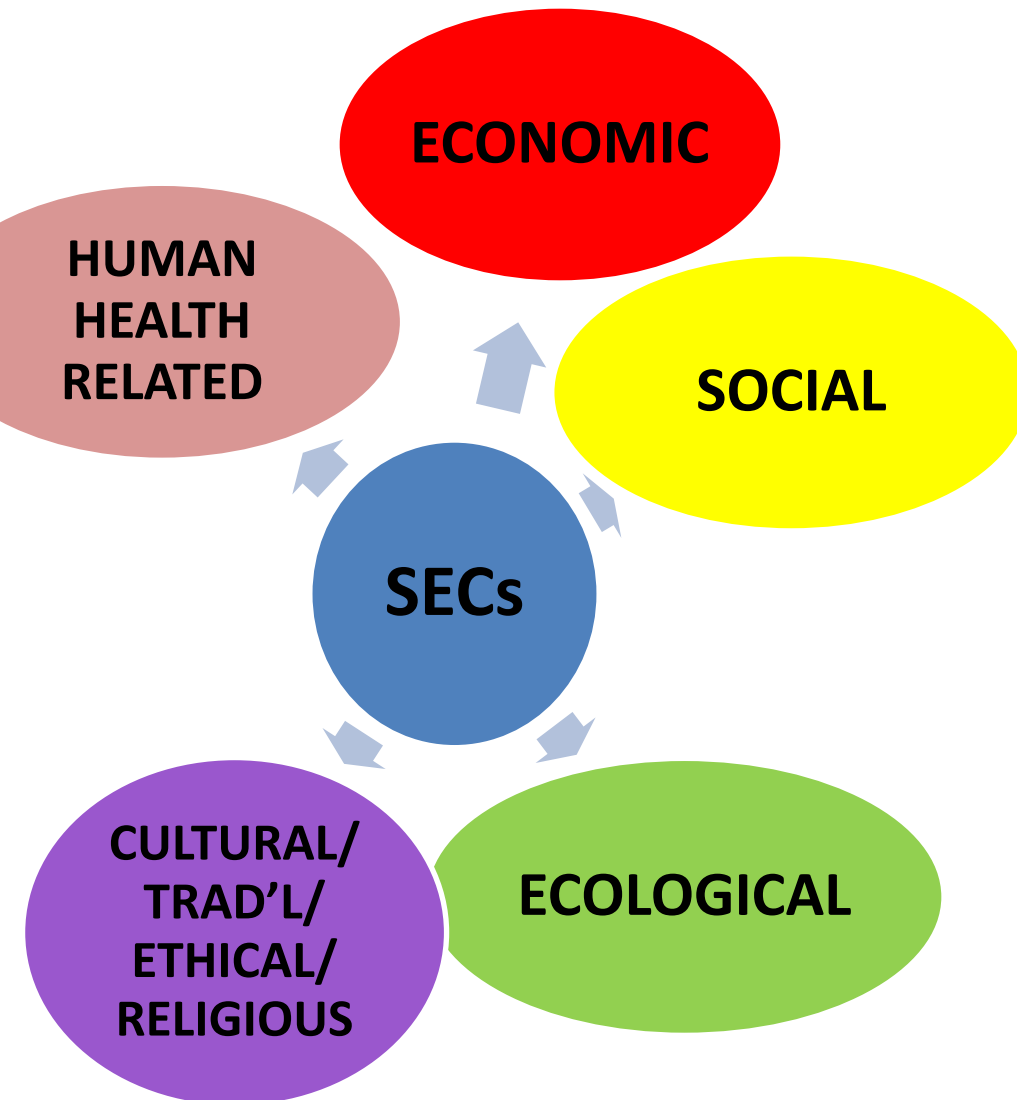
SEC and regulatory design issues – Process is important!!!

(J Falck-Zepeda)

Issues	Options
Type of inclusion?	<ul style="list-style-type: none">• No inclusion vs. Mandatory vs. Voluntary
What?	<ul style="list-style-type: none">• Issues for review
Who?	<ul style="list-style-type: none">• Developer vs. dedicated government unit vs. third party experts
Scope?	<ul style="list-style-type: none">• Narrow interpretation article 26.1• Narrow set of socio-economic issues• Broader set of assessments (SIA or SL)
Approach?	<ul style="list-style-type: none">• Concurrent but separate vs. Sequential vs. Embedded• Implementation entity
Assessment trigger?	<ul style="list-style-type: none">• Each submission vs. Event-by-event vs. class of events
When?	<ul style="list-style-type: none">• Laboratory/greenhouse vs. CFTs vs. Commercialization• For post release monitoring
How?	<ul style="list-style-type: none">• Will the assessment require a <i>de novo</i> study?• Choice of methods limited• Decision making rules and standards• Method integration, standards, tolerance to errors

AHTEG'S

5 Dimensions for SEC Classification



1. **Economic:** eg impact on income
2. **Social:** eg impact on food security
3. **Ecological:** eg impact on ecosystem functions
4. **Cultural/ traditional/ religious/ ethical:** eg impact on seed saving and exchange practices
5. **Human health-related:** eg impact on nutritional status

MAPPING INTERNATIONAL OBLIGATIONS IN AGRI-BIO REGULATION SEC ASSESSMENT ONTO AHTEG DIMENSIONS

DIMENSION -	ECO- NOMIC	SOCIAL	ECO- LOGICAL	CUL- TURAL	HUMAN HEALTH- RELATED
WTO Agreements (SPS, TBT & GATT)	v			v	v
TRIPS	v			v	
ILO Convention No 169	v		v	v	
ICESCR		v		v	
CBD & Subsidiary agreements	v	v	v	v	
Plant treaty		v	v	v	
UN Declaration - Indigenous Peoples	v			v	
WIPO	v			v	
UPOV	v	v		v	
CODEX	v			v	v



Social dimension

AHTEG example = food security

Definition - 'when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life' (FAO, 1996)

Possible problems in defining SEC:

- Assess whether GMOs improve v undermine food security
- Is consumer choice part of this? -> Economic Dimension
- Choice can be based on biodiversity conservation /sustainability -> Ecological Dimension
- Food security affected by market access/trade -> Economic Dimension

Social dimension

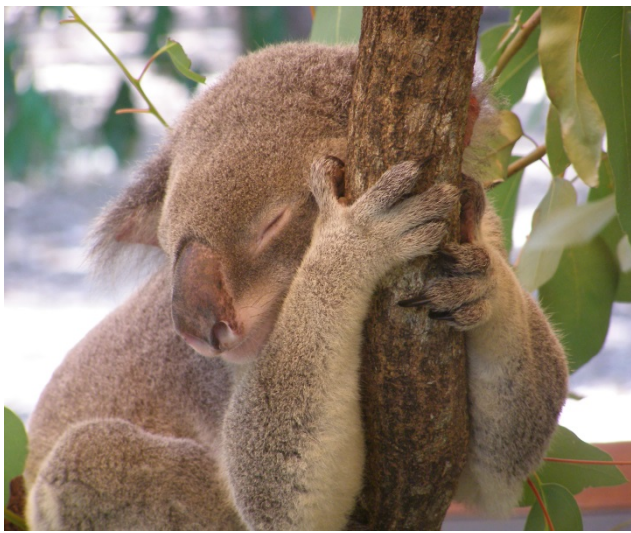
International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)

- Guarantees fundamental human rights including right of everyone to ...adequate food (article 11.1)
- Recognises fundamental right to be free from hunger (article 11.2) and requires parties to 'take individually and through international co-operation , the measures ...which are needed:
 - (a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge...
- Equal recognition of right to take part in cultural life and to enjoy the benefits of scientific progress and its applications (article 15.1)

Social dimension

Comments on overlap of ICESCR & CPB

- » CPB's narrow focus on potential impact on local, national and regional circumstances → may allow conflict with global focus of ICESCR obligations
- » rights of hungry to food seem stronger than rights to 'culinary sovereignty' → duty to avoid policies depriving other states of food?
- » ICESCR also relevant to Economic and Cultural Dimensions – priority?
- » ICESCR legally binding but aspirational and possibly unenforceable; no enforcement mechanism



Ecological dimension

AHTEG eg = 'impact on ecosystem functions'

Definition - 'all the ecosystem components and processes capable of generating ecosystem services benefiting human welfare'; ecosystem services includes both tangible and intangible contributions (CBD Article 2)

- Significant obligations in Ecological Dimension:
 1. CBD and subsidiary agreements
 2. Plant Treaty

Ecological dimension

1. CBD and subsidiary agreements

- Inconsistency unlikely because part of same regime
 - > But CPB assessments may influence / be influenced by policies adopted under other agreements in the CBD regime
- Legally binding but discretion as to implementation because many provisions:
 - are hortatory being qualified with the phrase ‘as far as possible and as appropriate’
 - make obligations subject to national legislation

Ecological dimension

2. Plant Treaty

(restricts private IP rights over material covered by the Treaty to allow access to genetic material of 64 plants and recognizes farmers' rights)

Objective - conservation and sustainable use of plant genetic resources for food and agriculture and fair and equitable sharing of benefits arising out of use for sustainable agriculture and **food security**

Parties to-

- minimize / eliminate threats to plant genetic resources for food and agriculture
- develop appropriate policy and legal measures that promote sustainable use of plant genetic resources for food and agriculture
- protect and promote farmers rights including participation in national decision-making related to conservation and sustainable use of plant genetic resources for food and agriculture

Ecological dimension

Comments on overlap between Plant Treaty and CPB

1. Plant Treaty's narrow focus on agriculture & plant genetic resources for food & agriculture -> may allow conflict with CPB's broad focus on sustainable use of biological diversity
 - Is agriculture part of the environment ?
 - CPB assessment should be of the additional impact of GM agriculture above that of agriculture
2. Modern biotechnologies recognised by Treaty as relevant to environmental changes and future human needs. Calls on other agreements to be mutually supportive of sustainable agriculture and food security -> influence on CPB?
3. Different group of decision-makers may be involved

CONCLUSIONS - International Level

1. Defining SECs crucial to determine relevant international obligations

Example = Social Dimension – discussion of food security

2. Inconsistencies in obligation focus causes compliance issues

Examples =

- Social – CPB narrower focus on local, national or regional circumstances v ICESCR global focus for GMO policy / assessment
- Ecological – CBD/CPB broad focus on biological diversity w/o reference to agriculture v Plant Treaty narrow focus on agriculture & food

3. Obligations in different international regimes impact each other

4. If same international obligation relevant to multiple dimensions where will its priority be? How will prioritization be decided?

5. Dispute resolution – who will decide if agreement can't be reached?

Example = Social - rights of hungry to food v rights to culinary sovereignty

CONCLUSIONS - National Level

1. Defining SECs – nations may need own definitions to reflect own policies
2. Each nation to determine own international obligation landscape
3. Some obligations require particular decision-makers be involved -> different decision-makers under different regimes in the one nation may lead to inconsistent decisions on similar issues

Thank you